



State of California
Employment Training Panel

Arnold Schwarzenegger, Governor

August 25, 2010

Angel Sanchez
Vice President, Government Partnerships, California
Bank of America Corporation, CA6-506-01-03
5295 Arlington Avenue
Riverside, CA. 92504-2604

Dear Mr. Sanchez:

Enclosed is our final audit report relative to the Employment Training Panel Agreement No. ET06-0108 for the period September 1, 2005, through August 31, 2007.

Also enclosed is a demand letter for payment of costs disallowed in the audit report. Payment is due upon receipt of this letter. If you wish to appeal the audit findings, you must follow the procedure specified in Attachment A to the audit report.

We appreciate the courtesy and cooperation extended to our auditors during the audit. If you have any questions, please contact Stephen Runkle, Audit Manager, at (916) 327-4758.

Sincerely,

Original signed by

Stephen Runkle
Audit Manager

Enclosures

cc: David Murray, Senior Vice President of Government Partnerships

BANK OF AMERICA CORPORATION

Agreement No. ET06-0108

Final Audit Report

For The Period

September 1, 2005 through August 31, 2007

Report Published August 25, 2010

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AUDITOR'S REPORT

Summary

We performed an audit of Bank of America Corporation, Agreement No. ET06-0108, for the period September 1, 2005 through August 31, 2007. Our audit pertained to training costs claimed by the Contractor under this Agreement. Our audit fieldwork was performed during the period September 14, 2009 through November 24, 2009.

The Employment Training Panel (ETP) paid the Contractor a total of \$3,433,250. Our audit supported that \$3,414,100 is allowable. The balance of \$19,150 is disallowed and must be returned to ETP.

The disallowed costs resulted from:

- 17 trainees with ineligible training hours
- 2 trainees who did not meet minimum wage requirements
- 4 trainees who were placed in ineligible occupations
- 7 trainees with unsupported class/lab hours
- 7 trainees who did not meet training hour requirements.

In addition, we noted an administrative finding for the inaccurate reporting of training data.

AUDITOR'S REPORT (continued)

Background

At the time of this Agreement, Bank of America Corporation, which is headquartered in Charlotte, North Carolina, employed over 38,000 Californians who deliver a diversified range of banking and non-banking financial services and products to domestic and international customers.

This is the second Agreement between Bank of America Corporation (B of A) and ETP. This training project sought to expand training in the Six Sigma continuous improvement program and provide occupational skills training to employees, many of them new-hires. B of A stated the training would allow the bank to meet organizational goals of process improvement and increased customer satisfaction. Therefore, the Agreement provided for training B of A's Global Technology Services and Fulfillment Group, Global Small Business Banking Group, Global Business and Financial Services Group, Consumer and Small Business Banking Technology Group, and the Global Transaction Services Group in Business Skills, Computer Skills, Continuous Improvement, and Management Skills.

This Agreement allowed B of A to receive a maximum reimbursement of \$3,433,250 for retraining 5,179 employees. During the Agreement term, the Contractor placed 2,669 trainees and was reimbursed \$3,433,250 by ETP.

Objectives, Scope, and Methodology

We performed our audit in accordance with *Government Auditing Standards*, promulgated by the United States General Accounting Office. We did not audit the financial statements of Bank of America Corporation. Our audit scope was limited to planning and performing audit procedures to obtain reasonable assurance that Bank of America Corporation complied with the terms of the Agreement and the applicable provisions of the California Unemployment Insurance Code.

Accordingly, we reviewed, tested, and analyzed the Contractor's documentation supporting training cost reimbursements. Our audit scope included, but was not limited to, conducting compliance tests to determine whether:

- Trainees were eligible to receive ETP training.
- Training documentation supports that trainees received the training hours reimbursed by ETP and met the minimum training hours identified in the Agreement.
- Trainees were employed continuously full-time with the Contractor for 90 consecutive days after completing training, and the 90-day retention period was completed within the

AUDITOR'S REPORT (continued)

Agreement term.

- Trainees were employed in the occupation for which they were trained and earned the minimum wage required at the end of the 90-day retention period.
- The Contractor's cash receipts agree with ETP cash disbursement records.

As part of our audit, we reviewed and obtained an understanding of the Contractor's management controls as required by *Government Auditing Standards*. The purpose of our review was to determine the nature, timing, and extent of our audit tests of training costs claimed. Our review was limited to the Contractor's procedures for documenting training hours provided and ensuring compliance with all Agreement terms, because it would have been inefficient to evaluate the effectiveness of management controls as a whole.

Conclusion

As summarized in Schedule 1, the Summary of Audit Results, and discussed more fully in the Findings and Recommendations Section of our report, our audit supported \$3,414,100 of the \$3,433,250 paid to the Contractor under this Agreement was allowable. The balance of \$19,150 was not earned according to the terms of the Agreement and must be returned to ETP.

Views of Responsible Officials

The audit findings were discussed with Angel Sanchez, Vice President, Government Partnerships, California, via e-mail on January 19, 2010. Mr. Sanchez agreed to bypass issuance of the draft report and proceed to the final audit report.

The issuance of your final audit report had been delayed by the audit unit. Therefore, ETP waived the accrual of interest for the disallowed costs beginning November 25, 2009 through the issue date of this final audit report. The interest waiver (adjustment) was \$656.35, which was deducted from the total accrued interest.

Audit Appeal Rights

If you wish to appeal the audit findings, it must be filed in writing with the Panel's Executive Director within 30 days of receipt of this audit report. The proper appeal procedure is specified in Title 22, California Code of Regulations, Section 4450 (attached).

Records

Please note the ETP Agreement, Paragraph 5, requires you to assure ETP or its representative has the right to, "... examine, reproduce, monitor and audit accounting source payroll documents, and all other records (including electronic records through the LMS), books, papers, documents or other evidence directly related to the performance of this Agreement by the Contractor... This right will terminate no sooner than four (4) years from the date of

AUDITOR'S REPORT (continued)

termination of the Agreement or three (3) years from the date of the last payment by ETP to the Contractor, or (3) years from the date of resolution of appeals, audits, claims, exceptions, or litigation, whichever is later.”

Stephen Runkle
Audit Manager

Fieldwork Completion Date: November 24, 2009

This report is a matter of public record and its distribution is not limited. The report is intended for use in conjunction with the administration of ETP Agreement No. ET06-0108 and should not be used for any other purpose.

SCHEDULE 1 – Summary of Audit Results

BANK OF AMERICA CORPORATION

AGREEMENT NO. ET06-0108

FOR THE PERIOD

SEPTEMBER 1, 2005 THROUGH AUGUST 31, 2007

	<u>Amount</u>	<u>Reference*</u>
Training Costs Paid By ETP	<u>\$ 3,433,250</u>	
Costs Disallowed:		
Ineligible Training Hours	7,731	Finding No. 1
Minimum Wage Requirement Not Met	3,691	Finding No. 2
Ineligible Trainee Occupation	3,263	Finding No. 3
Unsupported Class/Lab Training Hours	2,535	Finding No. 4
Training Hour Requirements not Met	1,930	Finding No. 5
Inaccurate Reporting	-	Finding No. 6
Total Costs Disallowed	<u>\$ 19,150</u>	
Training Costs Allowed	<u><u>\$ 3,414,100</u></u>	

* See Findings and Recommendations Section.

FINDINGS AND RECOMMENDATIONS

FINDING NO. 1 – Bank of America Corporation (B of A) received reimbursement for ineligible training hours for 2 Job No. 1 trainees and 15 Job No. 2 trainees. As a result, we disallowed \$7,731 in training costs for these trainees.

Paragraph 2(b) of the Agreement between ETP and B of A states, “Reimbursement for class/lab and videoconference training for trainees... will be based on the total actual number of training hours completed by training delivery method for each trainee, up to the maximum specified in Chart 1, providing the minimum and no more than the maximum hours are met.” Exhibit A, Chart 1 of the Agreement requires Job No. 1 and 2 trainees complete between 24 to 200 class/lab hours. Chart 1 identifies the Job No. 2 (Phase II) effective date as December 15, 2006.

Exhibit A, paragraph VII. A of the Agreement requires that each trainee must be employed full-time, at least 35 hours per week; with the Contractor for a period of at least ninety (90) consecutive days immediately following the completion of training.

Exhibit A, paragraph III of the Agreement requires that retrainees be employed full-time by the Contractor as of the start date of that individual's training.

Job No. 1 Trainees:

According to B of A training and payroll records, Trainee No. 4 began training on October 24, 2005, five months before being hired by B of A on March 20, 2006. Thus, 71.96 training hours reported from October 24, 2005, through November 29, 2005, were ineligible for reimbursement since it took place prior to the trainee's employment. Trainee No. 4 had only 8 eligible training hours remaining, which is below the required minimum of 24 hours per Chart 1 of the Agreement. Therefore, 100 percent of the training hours reimbursed for Trainee No. 4 are disallowed – (\$1,039).

B of A reported that Trainee No. 15 ended training on April 16, 2007, and completed retention April 17, 2007, through July 16, 2007. However, B of A payroll records show Trainee No. 15 worked only an average of 22 hours per week during the reported retention period. Therefore, rather than disallowing all of Trainee No. 15's training hours, ETP auditor adjusted her retention period to January 1, 2007, through April 1, 2007, during which time Trainee No. 15 met full-time retention requirements. This adjustment, however, caused 24 hours of training from March 19, 2007, through March 23, 2007, to be ineligible. Therefore, these 24 training hours are disallowed – (\$311).

FINDINGS AND RECOMMENDATIONS (continued)

Job No. 2 Trainees:

According to B of A training records and ETP Online Class/Lab Tracking information, 15 Job No. 2 (Phase II) trainees started training prior to the Phase II effective date of December 15, 2006. Therefore, all training hours that occurred prior to that date are disallowed for these trainees. Finding No. 1 (Table A) included below shows the date training began, number of days prior to Phase II effective date that training began, paid training hours, ineligible training hours received prior to Phase II, eligible training hours after Phase II start date, and the disallowed costs for these trainees.

Trainee No.	Began Training Date	No. of Days Trg Began Prior to Phase II 12/15/06	Paid Training Hours	Ineligible Training Hours Prior to Phase II	Eligible Training Hours After Phase II	Disallowed Costs
2	9/28/05	443	147.90	10.45	137.45	\$156
3	5/12/06	217	66.00	26.00	40.00	\$390
5	10/13/06	63	86.00	12.00	74.00	\$180
6	11/4/05	406	50.00	10.00	40.00	\$150
7	4/6/06	253	131.50	16.00	115.50	\$240
9	9/1/05	470	163.95	26.50	137.45	\$397
12	9/8/05	463	85.00	85.00	0.00	\$1,275
13	10/30/06	46	24.57	16.00	8.57	\$497
16	4/12/06	247	56.00	8.00	48.00	\$120
19	9/19/06	87	91.00	17.50	73.50	\$262
21	9/26/05	445	39.00	7.00	32.00	\$105
24	10/4/05	437	83.99	20.00	63.99	\$300
25	3/7/06	283	112.00	16.00	96.00	\$240
30	11/20/06	25	119.98	119.98	0.00	\$1,799
38	11/21/05	389	66.00	18.00	48.00	\$270
Total						\$6,381
Note:						
Trainee Nos. 12, 13 and 30 below required minimum 24 hours per Chart 1						

Recommendation B of A must return \$7,731 to ETP. In the future, the Contractor should submit only eligible training hours to ETP for reimbursement.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 2 –
Minimum Wage
Requirement Not
Met

B of A claimed reimbursement for 1 Job No. 1 trainee and 1 Job No. 2 trainee who did not meet the minimum wage requirement specified in the Agreement. As a result, we disallowed \$3,691 - (\$1,891 + \$1,800) in training costs claimed for these trainees. Noncompliance with minimum required wages was previously disclosed in our audit of ETP Agreement No. ET03-0203.

Exhibit A, paragraph VII. A. of the Agreement states, “Each trainee must be employed full-time... for a period of at least ninety (90) consecutive days immediately following the completion of training... Wages at the end of the 90-day retention period shall be equal to or greater than the wages listed in [the Agreement].”

The Agreement required a minimum hourly wage rate of \$12.37 per hour in Orange County for Job No. 1 and \$12.90 per hour in Los Angeles County for Job No. 2, following the post-training retention period. The Agreement allowed the Contractor to include the dollar value of employer-paid health benefits to meet minimum wage requirements.

B of A payroll records indicate that Trainee No. 8, who was placed in Job No. 1, earned an hourly wage of only \$11.00 in Orange County following retention. The Contractor reported that Trainee No. 8 did not receive sufficient employer paid health benefits in addition to wages to meet minimum required wages.

B of A payroll records indicate that Trainee No. 17, who was placed in Job No. 2, earned an hourly wage of only \$12.10 in Los Angeles County following retention. The Contractor reported that Trainee No. 8 did not receive employer paid health benefits in addition to wages to meet minimum required wages.

Recommendation

B of A must return \$3,691 to ETP. In the future, the Contractor should ensure trainees meet the minimum wage rate requirements prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 3 – B of A claimed reimbursement for 4 Job No. 1 trainees who were Ineligible Trainee Occupation not employed in occupations specified in the Agreement. As a result, we disallowed \$3,263 - (\$455 + \$988 + \$910 + \$910) in training costs claimed for these trainees.

Exhibit A, paragraph VII. A. of the Agreement states, “Employment for each trainee shall be in the occupations listed in [the Agreement]....” The occupations identified in the Agreement did not include senior level managers or executive staff.

Paragraph 5(i) of the Agreement states, “No senior level managers or executive staff who set company policy are included in ETP-funded training under this Agreement.”

B of A personnel records identified four trainees were employed as executive staff, and not in occupations specified in the Agreement. Job descriptions provided by the Contractor confirmed these trainees had the authority to set company policy. Finding No. 3 (Table A) included below shows the job title during retention, as provided by B of A, for these four trainees.

Trainee No.	Job No.	Job Title
14	1	Business Executive - Operations
33	1	Customer Service Center Executive
37	1	Process Design Executive
39	1	Service Delivery Executive

Recommendation B of A must return \$3,263 to ETP. In the future, the Contractor should ensure trainees are employed in the occupations specified in the Agreement and/or were not employed in senior level or executive positions, prior to claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 4 – B of A electronic training records did not support class/lab training hours reimbursed by ETP for 7 Job No. 1 trainees. Therefore, we disallowed \$2,535 in training costs claimed for these trainees.
Unsupported
Class/Lab Training
Hours

Title 22 California Code of Regulations, Section 4442(b) requires Contractor to maintain and make available records that clearly document all aspects of training.

Paragraph 2(b) of the Agreement states: “Reimbursement for class/lab and videoconference training for trainees in job number one (1) [Job No. 2 added in Amendment No. 1] will be based on the total actual number of training hours..., up to the maximum specified in Chart 1, providing the minimum and no more than the maximum hours are met.” Exhibit A, Chart 1 of the Agreement requires Job Nos. 1 and 2 trainees complete between 24 to 200 class/lab hours.

Paragraph 4 of the Agreement states: “...Contractor will document all training utilizing electronic records in place of paper-based records through its Associate Learning Portal (ALP) which utilizes a Learning Management System (LMS). The LMS will produce electronic printouts by trainee which document all aspects of training, including: 1) Trainee name, 2) Instructor Name, 3) Training dates, 4) Training hours, 5) Type of Training, 6) Course Title, and 7) Training Delivery Method. Contractor will earn reimbursement only for courses in the LMS that are included in the training curricula, as referenced in Exhibit B.”

ALP Training Reports provided by B of A during our audit did not include any record for some of the reported training hours for 2 Job No. 1 trainees.

Furthermore, the ALP Training Reports also show the same training was reported twice for 5 Job No. 1 trainees. The ALP Training Reports for these trainees show Session Codes 20034632, 20042911, and 20042912 were completed from January 1, 2006 to February 24, 2006 and were taught by the same instructor. The ALP reports showed 152, 136, and 16 training hours for each session (respectively) and that these courses had similar “New Hire” course titles as follows: “California Consumer New Hire Training,” “Small Business Contact Center New Hire Training,” and “California New Hire Non-Production Lab Hours.”

As a result, the ALP reports showed a total of 306 hours were completed during a period of 26 days, inclusive of holidays and weekends, for an average of 11.77 training hours each day. ETP auditor determined Session Codes 20034632 and 20042911 were for the same training based on the course data (dates, instructor, and topic) and that the training schedule (11.77 hours per day for

FINDINGS AND RECOMMENDATIONS (continued)

26 consecutive days) was not credible. ETP auditor allowed Session Codes 20034632 and 20042912 for 152 and 16 training hours, respectively. Thus, 32 training hours reported to ETP for Session Code 20042911 are disallowed for each of these 5 trainees.

Finding No. 4 (Table A) included below shows the paid class/lab hours, class/lab hours unsupported by the ALP, audited class/lab hours and disallowed costs for the 7 trainees noted above.

Trainee No.	Paid Class/Lab Hours	Class/Lab Hours Unsupported by ALP Reports	Audited Class/Lab Hours	Disallowed Costs	Code
1	200.00	32.00	168.00	\$416	B
11	200.00	19.00	181.00	\$247	A
20	200.00	32.00	168.00	\$416	B
27	200.00	32.00	168.00	\$416	B
28	106.50	16.00	90.50	\$208	A
31	200.00	32.00	168.00	\$416	B
34	200.00	32.00	168.00	\$416	B
Total				\$2,535	
LEGEND:					
A - Reported training not on ALP Training Report.					
B - Training reported twice on ALP Training Report.					

Recommendation B of A must return \$2,535 to ETP. In the future, the Contractor should ensure that training records support hours submitted for reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 5 – Training information reported by B of A and B of A payroll documentation shows 3 Job No. 1 trainees and 4 Job No. 2 trainees did not receive the required minimum of 24 training hours specified by Chart 1 of the Agreement. As a result, we disallowed \$1,930 in training costs claimed for these trainees.

Training Hour
Requirements not
Met

Paragraph 2(b) of the Agreement states, “Reimbursement for class/lab and videoconference training for trainees... will be based on the total actual number of training hours completed by training delivery method for each trainee, up to the maximum specified in Chart 1, providing the minimum and no more than the maximum hours are met.” Exhibit A, Chart 1 of the Agreement requires Job Nos. 1 and 2 trainees complete between 24 to 200 class/lab hours.

Exhibit A, paragraph VII. A of the Agreement requires that each trainee must be employed for a period of at least ninety (90) consecutive days, at least 35 hours per week; with the Contractor immediately following the completion of training.

B of A reported training dates and hours for each placed trainee to ETP via the ETP’s Online Class/Lab Tracking System. Based on the reported information, ETP auditor noted B of A was incorrectly reimbursed for the training costs of 3 Job No. 1 and 4 Job No. 2 trainees, who, prior to their retention periods, received less than the minimum of 24 training hours required by Chart 1. B of A payroll records support that the retention periods of these trainees occurred during their last 90 days of employment. Furthermore, no subsequent period of employment met ETP retention requirements. Therefore, any training that occurred during the retention period is ineligible for reimbursement.

Finding No. 5 (Table A) included below shows the retention start and end dates, termination dates, and eligible training hours received prior to retention for each of the trainees noted above.

Trainee No.	Job No.	Retention Start Date	Retention End Date	Term Date	Eligible Trg Hrs Prior to Retention	Disallowed Costs
10	1	3/17/07	6/15/07	6/15/07	8.00	\$104
18	2	4/3/07	7/2/07	7/2/07	16.00	\$360
22	2	4/25/07	7/24/07	7/24/07	16.67	\$380
23	1	8/29/06	11/27/06	11/27/06	8.00	\$201
26	1	6/24/06	9/22/06	9/22/06	10.00	\$130
32	2	3/10/07	6/8/07	6/8/07	20.00	\$375
36	2	4/25/07	7/24/07	7/24/07	16.67	\$380
Total						\$1,930

FINDINGS AND RECOMMENDATIONS (continued)

Recommendation B of A must return \$1,930 to ETP. In the future, the Contractor should ensure that trainees complete the minimum required training hours prior to retention before claiming reimbursement from ETP.

FINDINGS AND RECOMMENDATIONS (continued)

FINDING NO. 6 – Training data reported by B of A to ETP was inaccurate. As a result, the Contractor did not comply with the Agreement reporting requirements.

Inaccurate
Reporting of
Training Data

Paragraph 2 (d) of the Agreement states, “Contractor shall submit invoices and necessary statistical data to ETP in form and manner prescribed by ETP.” Accurate training data is required to verify compliance with the terms of the Agreement.

B of A was approved by ETP to use their Associate Learning Portal (ALP), a Learning Management System, to record training, but the ALP only records a total number of hours completed within a range of dates for each training session. The ALP does not record specific training hours delivered on specific dates, as required for reporting to ETP. In a meeting between B of A representatives and ETP staff on August 4, 2005, the Contractor agreed to provide accurate and specific training hours and dates since ETP advised B of A that a range of dates and total hours completed for individual training sessions would not meet ETP requirements.

However, in the course of our audit, ETP auditor found that B of A had not taken the necessary steps to obtain, record and report accurate dates and hours of training. Instead, the Contractor created and used a subsystem, “Government Partnerships,” that merely filtered source ALP training data i.e. ranges of dates and total hours into arbitrary dates and numbers of training hours per those arbitrary dates solely to format source ALP training data for uploading into ETP’s On-line Class/lab Tracking. The “Government Partnerships” system did not maintain accurate dates and hours of training.

Therefore, when auditing reported class/lab hours, ETP auditor did not find a correlation between the training data submitted to ETP On-line Tracking and the ALP reports, which was the source electronic recordkeeping system approved by the Panel. ETP auditor did determine, however (other than as noted in Finding No. 4), that the range of dates and total hours recorded in the ALP did support total amounts paid by ETP for sample trainees. Thus, this lack of compliance resulted in an administrative finding only.

Recommendation In the future, B of A should ensure all trainee data submitted to ETP is accurate and complete. Inaccurate or incomplete data may result in repayment of unearned funds, plus applicable interest to ETP.

ATTACHMENT A - Appeal Process

4450. Appeal Process.

- (a) An interested person may appeal any final adverse decision made on behalf of the Panel where said decision is communicated in writing. Appeals must be submitted in writing to the Executive Director at the Employment Training Panel in Sacramento.
- (b) There are two levels of appeal before the Panel. The first level must be exhausted before proceeding to the second.
 - (1) The first level of appeal is to the Executive Director, and must be submitted within 30 days of receipt of the final adverse decision. This appeal will not be accepted by the Executive Director unless it includes a statement setting forth the issues and facts in dispute. Any documents or other writings that support the appeal should be forwarded with this statement. The Executive Director will issue a written determination within 60 days of receiving said appeal.
 - (2) The second level of appeal is to the Panel, and must be submitted within 10 days of receipt of the Executive Director's determination. This appeal should include a statement setting forth the appellant's argument as to why that determination should be reversed by the Panel, and forwarding any supporting documents or other writings that were not provided at the first level of appeal to the Executive Director. If the Panel accepts the appeal and chooses to conduct a hearing, it may accept sworn witness testimony on the record.
 - (A) The Panel must take one of the following actions within 45 days of receipt of a second-level appeal:
 - (1) Refuse to hear the matter, giving the appellant written reasons for the denial; or
 - (2) Conduct a hearing on a regularly-scheduled meeting date; or
 - (3) Delegate the authority to conduct a hearing to a subcommittee of one or more Panel members, or to an Administrative Law Judge with the Office of Administrative Hearings.
 - (B) The Panel or its designee may take action to adopt any of the administrative adjudication provisions of the Administrative Procedures Act at Government Code Section 11370 *et seq.*, for the purpose of formulating and issuing its decision. Said action may take place at the hearing, or in preliminary proceedings.
 - (C) Upon completion of the hearing, the record will be closed and the Panel will issue a final ruling. The ruling may be based on a recommendation from the hearing designee. The ruling shall be issued in a writing served simultaneously on the appellant and ETP, within 60 days of the record closure.
- (c) The time limits specified above may be adjusted or extended by the Executive Director or the Panel Chairman for good cause, pertinent to the level of appeal.
- (d) Following receipt of the Panel's ruling, the appellant may petition for judicial review in Superior Court pursuant to Code of Civil Procedure Section 1094.5. This petition must be filed within 60 days from receipt of the Panel's ruling.

Authority: Section 10205(m), Unemployment Insurance Code; Section 11410.40, Government Code.

Reference: Sections 10205(k), 10207, Unemployment Insurance Code.

Effective: April 15, 1995

Amended: December 30, 2006